

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Weldy, Ralph E.
Appl. No.: 10/039,004
Conf. No.: 7477
Filed: January 4, 2002
Title: METHOD OF PROCESSING POULTRY AND MEAT PRODUCTS
Art Unit: 1761
Examiner: Corbin, Arthur L.
Docket No.: 112480-10

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF ROBIN DUNLEAVY UNDER 37 C.F.R. §1.132

Sir:

I, Robin Dunleavy, hereby state:

1. I am Director of Product Development at OSI Industries, LLC (hereinafter "OSI"), which is the Assignee of the above-identified patent application and located in Aurora, Illinois.
2. I am aware of and have reviewed claims 1 to 15 of the above-identified patent application and am aware of the subject matter described and claimed therein.
3. I am aware of and have reviewed the following references cited by the United States Patent and Trademark Office:
 - a. The Good Cook Techniques and Recipes, published 1979 ("*Good Cook*")
 - b. U.S. Patent No. 4,012,808 to Strong ("*Strong*")

4. *Good Cook* does not disclose immersing the individual slices into the seasoning liquid solution or maintaining the individual slices in the seasoning solution for a time period sufficient for the seasoning liquid solution to permeate each slice throughout the entire slice as evidenced by the following:

a. The Stir Fried Chicken with Fresh Mushrooms Recipe ("the Stir Fried Recipe") on page 96 of *Good Cook*

1) The Stir Fried Recipe includes the following steps:

- a) slicing a 6 oz. (180g) boneless chicken breast with the grain into 2-by-1-by 1/8-inch [5 cm-by 2½ cm-by-3mm] pieces;
- b) combining the sliced chicken with a marinade solution consisting of:
 - i) 2 tsp. (10ml) corn starch,
 - ii) 2 tbsp. (30ml) cold water, and
 - iii) ½ tsp. (2ml) salt;
- c) mixing well using your hand; and
- d) covering the chicken and keeping the chicken in a refrigerator for up to 24 hours.

2) I directed the performance of each of the steps, in duplicate, of the Stir Fried Recipe in a cooking lab at OSI on November 28, 2005. In addition to the steps above, I had the skin on the chicken breast removed and had 0.6 grams of green food coloring mixed into the marinade of the Stir Fried Recipe until it completely dissolved in the marinade. I had the chicken pieces laid flat and side-to-side on a rimmed plate having an eight-inch diameter and ¼-inch depth sufficient to accommodate the chicken pieces.

3) The chicken pieces were not able to be immersed in the marinade.

4) After refrigerating the marinated chicken pieces for 24 hours, I examined a cross-section of each of the pieces.

5) The marinade, as indicated by the take-up of the dye in the chicken pieces, did not permeate each slice throughout the entire slice. I have included a photograph of a cross-section of an example chicken slice in Exhibit A.

b. The Teriyaki Broiled Chicken Recipe ("the Teriyaki Recipe")
on page 108 of *Good Cook*

- 1) The Teriyaki Recipe includes:
 - a) six halves of three-2 lb (1 kg) chickens;
 - b) combining the chicken pieces with a marinade solution consisting of
 - i) ½ cup (125 ml) peanut oil,
 - ii) 2/3 cup (150 ml) Japanese soy sauce,
 - iii) 2 tbsp. (30 ml) grated fresh ginger root,
 - iv) 2 garlic cloves finely chopped,
 - v) 1 tbsp. (15 ml) grated fresh orange peel, and
 - vi) ¼ cup (50 ml) dry sherry

2) I directed the preparation of the marinade solution of the Teriyaki Recipe in a cooking lab at OSI on November 28, 2005.

3) The chicken pieces were not able to be immersed in the marinade.

4) The thickness of the chicken pieces was such that, in my opinion and experience, I am certain there is no way the marinade would penetrate any of the chicken pieces throughout the entire piece.

5. *Strong* does not disclose maintaining the individual slices in the seasoning solution for a time period sufficient for the seasoning liquid solution to permeate each slice throughout the entire slice as evidenced by the following:

- a. *Strong* discloses the following steps:
 - 1) storing a freshly killed chicken weighing slightly in excess of two pounds in ice water for one week;
 - 2) cutting the chilled chicken into nine pieces, namely into two drumsticks, two thighs, two wings, two side breasts and one keelbone;

- 3) for each of the chicken pieces,
 - i) dropping the chicken piece in a basin with 10% sodium chloride marinade solution maintained at a depth of 3½ inches,
 - ii) scooping the chicken piece out of the marinade solution with a large metal scoop, and
 - iii) repeating steps i) and ii) 90 times over a period of 15 minutes.

b. I directed the performance of the steps, in duplicate, described in Strong on each of the four types of chicken pieces in a cooking lab at OSI on November 28, 2005. In addition to the steps above, I had the skin on the chicken pieces removed and had 6 grams of blue food coloring mixed into the marinade solution of Strong until it completely dissolved in the solution.

c. After performing the steps described above for each type of chicken piece, I examined a cross-section of each of the pieces.

d. The marinade solution, as indicated by the take-up of the dye in the chicken pieces, did not permeate each piece throughout the entire piece. I have included a photograph of a cross-section of an example chicken piece in Exhibit B.

6. Therefore, neither *Good Cook* nor *Strong* discloses maintaining the individual slices in the seasoning solution for a time period sufficient for the seasoning liquid solution to permeate each slice throughout the entire slice.

Declaration of Robin Dunleavy
Application No. 10/039,004

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001, Title 18, United States Code, and that willful false statements may jeopardize the validity of this patent and any patent issuing therefrom.

Date: 11/29/05 Robin S. Dunleavy

Print Name: Robin Dunleavy